



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Veterans Administration--Appropriation Chargeable
for Back Pay Claims

File: B-233993

Date: October 27, 1989

DIGESTS

1. Agency should charge back pay claims awarded pursuant to an administrative determination to the fiscal year or years to which the award related.
2. Back pay claims awarded by judicial determination resulting in a final judgment should be paid from the judgment fund established by 31 U.S.C. § 1304.
3. Effective December 22, 1987, interest on back pay claims applies to periods before and after that date and is chargeable to the same appropriations and in the same manner as is the back pay upon which the interest is paid.

DECISION

By letter dated December 21, 1988, the Director, Finance Service, Veterans Administration, asked for our decision concerning the appropriation chargeable on back pay awards made by an appropriate authority to an employee or former employee who, while employed by the federal government, was affected by an unjustified or unwarranted personnel action. The Director is concerned that "[t]he fact that the outcome of an appeal can not be determined in advance negates establishing an obligation [prior to final determination] because there is no definite commitment for payment of appropriated funds."

For the reasons given below, we conclude that administrative back pay awards should be charged to, and paid from, the agency appropriation covering the fiscal year or years to which the award relates. Back pay claims awarded by the judgment of a court or settlement are payable from the judgment fund. Except for a limited exception, interest on back pay awards is payable from the same appropriation as the back pay award.

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The Director specifically asked that we provide our opinion on the following four questions.

- 1) "If the back pay is to be made for a period other than the fiscal year in which the final decision is made, should the appropriation current in the fiscal year in which the final decision is made be the one to be charged with the involved payment or should the payment be made out of the funds of the fiscal year or years to which the compensation is applicable?
- 2) "Is there a difference in determining which fiscal year to charge if the final decision is made by the employing agency as opposed to being made by either an administrative entity outside the employing agency or by a court decision?
- 3) "Since Public Law 100-202 enacted December 22, 1987 provides for payment of interest on back pay claims, should such interest be charged to the appropriation in the same manner as the back pay?
- 4) "If your decision on the questions concerning back pay advises that back pay is to be charged to the appropriation of the fiscal year or fiscal years to which the compensation is applicable, must payment of interest be deferred until December 22, 1987 or thereafter?"

BACK PAY AWARDS FOR PRIOR FISCAL YEAR

As the first question indicates, when the events giving rise to a claim occur in one year and settlement occurs in a later fiscal year, an issue may arise concerning which fiscal year's appropriation to charge. The treatment of federal employees' compensation and related allowances is well settled--such expenses are charged to the appropriation for the fiscal year in which the work was performed, or in the case of wrongful termination, for the period of time deemed valid service under the Back Pay Act. See 58 Comp. Gen. 115 (1978). If the claim covers more than one fiscal year, the payment is prorated accordingly.^{1/}

^{1/} In 58 Comp. Gen. 115 (1978), we held that agency contributions to an employee's retirement account, following restoration after an improper termination, where not payable from the permanent judgment appropriation, must be prorated among the fiscal years covered. Although that case involved

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ADMINISTRATIVE VS. JUDICIAL DETERMINATION

Appropriations provided for regular governmental operations or activities, even though these operations or activities give rise to a cause of action, are not available to pay court judgments in the absence of specific authority. 40 Comp. Gen. 95, 97 (1960). In order to simplify the payment of such judgments, Congress enacted 31 U.S.C. § 1304(a) (1982) which provides for payments of "final judgments, awards, and compromise settlements," when certified by the Comptroller General. However, this permanent indefinite appropriation, i.e., the judgment fund, does not encompass payment of administrative awards made either by the employing agency or an outside administrative entity.

The language of the relevant provision of the judgment fund statute clearly limits its application to final judgments of a court of law and settlements entered into under the authority of the Attorney General. When entitlement to back pay arises from an administrative determination of the employing agency, the back pay is payable by the employing agency from its own appropriations. See 58 Comp. Gen. 311 (1979). When the payment is based on an administrative determination, the back pay should be charged to the fiscal year(s) to which the payment relates. Except as discussed below, payment of an administrative settlement may not be made from the permanent appropriation for judgments. See, B-199291, June 19, 1981.

INTEREST ON BACK PAY ACT AWARDS AFTER DECEMBER 22, 1987

Except for the limited exception discussed below, interest under the Back Pay Act is payable from the same appropriation or appropriations and in the same manner as the back pay to which the interest applies. See 5 U.S.C. § 5596(b)(2)(C), added by Pub. L. No. 100-202, § 623(a), (b), 101 Stat. 1329-429, December 22, 1987. Therefore, interest awarded pursuant to an administrative determination is chargeable to the fiscal year or years to which the back pay award relates. When a court makes a final judgment awarding back pay, the interest is paid from the permanent, indefinite judgment fund appropriation created by section

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back pay under the Back Pay Act, Title VII of the Civil Rights Act, and the Veterans Preference Act, we see no reason why, for obligation purposes, administrative payments of back pay, should be treated differently.

1304 of title 31; the fiscal year question is irrelevant when this fund is used.

INTEREST ON AWARDS FOR PERIODS PRIOR TO DECEMBER 22, 1987.

The last question concerns whether payment of interest may be made for periods prior to December 22, 1987, or only for periods beginning thereafter. The amendments to the Back Pay Act which took effect on December 22, 1987, allow for payment of interest, and apply to any employee found, in a final judgment entered or a final decision otherwise rendered on or after December 22, 1987, to have been the subject of an unjustified or unwarranted personnel action, the correction of which entitles the employee to payment under the Back Pay Act. Pub. L. No. 100-202, § 623(b)(1), 100 Stat. 1329-429 (1987). Interest is computed on the award amount from the beginning of the unjustified withdrawal or reduction in pay that gave rise to the award until not more than 30 days before the date on which payment is made. Therefore, interest on judgments or determinations entered after the effective date apply to back payments covering periods before December 22, 1987, as well as after.

Judgments or other final decisions or determinations entered before the effective date are not covered by the Back Pay Act interest provisions except to the extent that the right to interest was specifically reserved and the award qualifies for the exception contained in § 623(b)(2) of Pub. L. No. 100-202, 100 Stat. 1329-429 (1987). The 1987 amendments to the Back Pay Act make interest from certain pre-enactment cases, where interest was specifically reserved, payable from the judgment fund. See Pub. L. No. 100-202, § 623(b)(2)(A) and (c), 101 Stat. 1329-429, December 22, 1987.

for Milton F. Jordan
Comptroller General
of the United States